

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JORGE FONSECA and REYES ANDON, on behalf
of themselves and others similarly situated,

Plaintiffs,

v.

DIRCKSEN & TALLEYRAND INC. d/b/a RIVER
CAFÉ and MICHAEL "BUZZY" O'KEEFE,

Defendants.

13 CV 5124 (AT)(SN)

IT IS HEREBY STIPULATED AND AGREED by and between the Parties, through
their undersigned counsel, that:

1. Plaintiffs' claims brought under N. Y. Lab. Law § 195(1) are hereby withdrawn,
without prejudice.

2. The Fed. R. Civ. P. Rule 23 Class as defined and certified by the Court on
September 28, 2015 shall also be certified into two subclasses for the purposes of the N. Y. Lab.
Law § 195(3) allegations set forth in Plaintiffs' Amended Complaint, subject to the following:

a. The first N. Y. Lab. Law § 195(3) subclass shall consist of all Class
Members who received a paycheck from ADP from the beginning of the limitations period to
December 31, 2011.

b. The second N. Y. Lab. Law § 195(3) subclass shall consist of all Class
Members who received a paycheck from Paychex from January 1, 2012 up to the date upon
which the following language (or substantially similar language with potentially different pay
amounts) appeared on the paycheck under the "Messages" heading: "Hospitality ind: food serv
wrks-tip cred up to \$1.50hr (othr serv wrks up to 3.10) taken toward \$9.00hr min wage. If cash
wage+ tips< 9.00hr, tip makeup added to= 9.00hr" ("Tip Credit Message").

3. The precise date that River Café began including the Tip Credit Message shall be determined through discovery.

4. Defendants agree not to dispute Plaintiffs' assertions that Class Members' N. Y. Lab. Law § 195(3) claims meet all the requirements of Fed. R. Civ. P. Rules 23(a) and 23(b)(3).

5. Plaintiffs do not seek damages under N. Y. Lab. Law § 195(3), on behalf of themselves and the class, for the time period during which Defendants included the Tip Credit Message.

6. Unless otherwise agreed to in writing by the Parties, by April 15, 2016, Defendants shall produce a Fed. R. Civ. P. 30(b)(6) witness to testify with respect to all aspects of the wage statements and paystubs issued to Class Members.

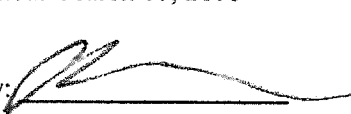
Dated: March 17, 2016

By: 

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Attorneys for Plaintiffs

Dated: March 17, 2016

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Attorneys for Defendants

SO ORDERED.

Dated: March 21, 2016
New York, New York



ANALISA TORRES
United States District Judge